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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,849	01/15/2004	Christopher G. Malone	200311279-1	8762

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FORT COLLINS, CO 80527-2400

EXAMINER

BOLES, DEREK

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,849

Applicant(s)

MALONE, CHRISTOPHER G.

Examiner

Derek S. Boles

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 20-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 20-27 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/15/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19 and 28, drawn to an airflow distribution control system, classified in class 454, subclass 184.
- II. Claims 20-24, are drawn to flow control, classified in class 361, subclass 695.
- III. Claims 25-27, are drawn to computable readable program code, classified in class 703, subclass 14.

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process claimed can be practiced by hand. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Ken Koestner on 6/21/05 a provisional election was made with traverse to prosecute the invention of I, claims 1-19, 28. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 1-19 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's information disclosure statement entry (IQ) in view of May (3,318,225). (IQ) discloses all of the limitations of the claim(s) except for a sensor communicatively coupled to the partition that detects a parameter indicative of airflow distribution and controls the flow resistance based on the parameter. May discloses the presence of a sensor communicatively coupled to the partition that detects a parameter indicative of airflow distribution and controls the flow resistance based on the parameter. See fig. 1 and col. 3, lines 1-9. Hence, one skilled in the art would find it obvious to modify the system of (IQ) to include the a sensor communicatively coupled to the partition that detects a parameter indicative of airflow distribution and controls the flow resistance based on the parameter of May for the purpose of automatic airflow distribution. Regarding claim 2, see pages 6-7 of (IQ). Regarding claim 13, see page 7 of (IQ).

Regarding claims 5, 9, 14, 17, (IQ) in view of May discloses all of the limitations of the claims except for a network of distributed sensors, a plurality of louvered shutters in the partition and one partition's flow resistance being independently controllable. However, since the applicant has failed to establish any criticality or synergistic results which are derived from the recited configurations, these limitations are considered a matter of obvious design choice. Thus,

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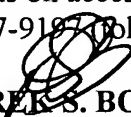
the applicant's design configurations would have been an obvious improvement to one of ordinary skill in the art with regard to the apparatus disclosed in (IQ) in view of May.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The provided references are representative of the state of the art that is applicable to the applicant's invention. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derek S. Boles at (571) 272-4872.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9187 (toll-free).

D.S.B.


DEREK S. BOLES
PRIMARY EXAMINER
GROUP 3700

8/6/05